



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU REMINDS CARRIERS OF THEIR OBLIGATIONS UNDER THE PAYPHONE COMPENSATION RULES

CC DOCKET No. 96-128

We issue this public notice as a reminder to facilities-based telecommunications carriers of their obligations under the Commission's payphone compensation rules. The rules, which became effective on July 1, 2004, place certain requirements on "Completing Carriers"<sup>1</sup> and "Intermediate Carriers."<sup>2</sup> The purpose of these requirements is to ensure that payphone service providers (PSPs) are fairly compensated for each and every payphone-originated call that is completed, as required under section 276 of the Communications Act.<sup>3</sup>

First, we remind each Completing Carrier that if it has not entered into an alternative compensation arrangement with a PSP, it must:<sup>4</sup>

- establish detailed procedures for tracking payphone-originated calls to completion, for compensating the PSPs for those calls, and for resolving any disputes with PSPs over compensation;<sup>5</sup>
- engage a third-party auditor to verify that the Completing Carrier has in place these detailed procedures and to verify, on an annual basis, that the Completing Carrier's payphone compensation procedures continue to comply with our rules;<sup>6</sup>

<sup>1</sup> A Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call. 47 C.F.R. § 64.1300(a).

<sup>2</sup> An Intermediate Carrier is a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers. 47 C.F.R. § 64.1310(b).

<sup>3</sup> 47 U.S.C. § 276. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003) (*Payphone Order*); Order on Reconsideration, 19 FCC Rcd 21457 (2004) (*Order on Reconsideration*).

<sup>4</sup> *See* 47 C.F.R. §§ 64.1310(a), 64.1320(a).

<sup>5</sup> *See* 47 C.F.R. § 64.1320(c) (setting forth nine (9) requirements for a Completing Carrier's tracking system).

<sup>6</sup> *See* 47 C.F.R. § 64.1320(a), (c), (d), (f).

- identify itself as a Completing Carrier annually by filing a "System Audit Report" and a statement with the Commission that includes the name of the Completing Carrier, and the name, address and phone number for the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with PSPs over compensation, and this statement shall be updated within 60 days of any changes of such persons;<sup>7</sup>
- provide the System Audit Report and statement to each PSP for which it completes calls or provide a web address where it can be found;<sup>8</sup>
- provide the System Audit Report and the statement to the facilities-based long distance carriers from which it receives payphone calls;<sup>9</sup>
- permit PSPs to inspect any documents, including working papers, underlying the System Audit Report;<sup>10</sup>
- pay the PSPs on a quarterly basis;<sup>11</sup>
- designate its CFO as the Completing Carrier officer responsible for ensuring that the company has in place personnel and procedures to comply with our rules such that the CFO may with confidence certify at the end of each quarter that the Completing Carrier's payphone payments are based on 100% of all completed calls;<sup>12</sup> and

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<sup>7</sup> See 47 C.F.R. § 64.1320(b)(1), (e), (f).

<sup>8</sup> See 47 C.F.R. § 64.1320(b)(2), (e).

<sup>9</sup> See 47 C.F.R. § 64.1320(b)(3), (e).

<sup>10</sup> See 47 C.F.R. § 64.1320(g).

<sup>11</sup> See 47 C.F.R. § 64.1310(a)(2). As required by the payphone rules, payments, chief financial officer (CFO) certification, and reports are due to the PSPs on a quarterly basis. See 47 C.F.R. §§ 64.1310(a)(2), (a)(3), and (c). Based on industry practice, there is a three month lag during which payments are calculated. Thus, the payments, CFO certification, and reports for a quarter are due three months and one day following the close of a quarter. For example, Intermediate Carriers must provide the Intermediate Carrier reports to the PSPs for the calls switched during the first quarter of 2006 (from January 1 to March 31) on July 1, 2006. Similarly, Completing Carriers must submit their quarterly payment, CFO certification, and Completing Carrier report to PSPs for the first quarter on July 1, 2006. See, e.g., *Order on Reconsideration*, 19 FCC Rcd at 21481, para. 48 n.154 (the payment process "generally takes a full calendar quarter to complete, thus, PSPs generally receive payment and quarterly reports three months after the close of the quarter"); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fourth Order on Reconsideration and Order on Remand, 17 FCC Rcd 2020, 2024 at para. 9 n.28 (2002) ("Typically, an IXC or LEC is billed in April for payphone calls originating during the first quarter of the year, and the IXC or LEC issues a check to the PSP by July 1."); *APCC Services, Inc., Data Net Systems, LLC, Davel Communications, Inc., Jaroth, Inc. dba Pacific Telemanagement Services, and Intera Communications Corp. v. TS Interactive, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 10456, 10463 at para. 18 (2004) ("For purposes of this case only, we accept Complainants' assertion that the obligation of carriers to compensate payphone owners for dial-around calls arises quarterly, on the first day of the quarter that is one quarter after the one in which those calls were made (e.g., calls made in the first quarter of 1999 became due on the first day of the third quarter of 1999.)")

<sup>12</sup> See 47 C.F.R. § 64.1310(a)(3).

- provide each PSP a report on a quarterly basis that includes:
  - a list of the toll-free and access numbers dialed and completed by the Completing Carrier from each of that PSP's payphones, and the Automatic Number Identification (ANI) for each payphone;<sup>13</sup>
  - the volume of calls for each number identified in such list that were completed by the Completing Carrier;<sup>14</sup>
  - the name, address, and telephone number of the persons responsible for handling the Completing Carrier's payphone compensation;<sup>15</sup> and
  - the carrier identification code (CIC) of all facilities-based long distance carriers that routed calls to the Completing Carrier, categorized by the list of toll-free and access code numbers dialed and completed by the Completing Carrier.<sup>16</sup>

Second, we remind Intermediate Carriers that, consistent with section 64.1310(c), they must provide accurate and timely quarterly reports (Intermediate Carrier reports) to each PSP that include:

- a list identifying all facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that PSP's payphones;<sup>17</sup>
- a list of all the toll-free and access code numbers for calls dialed from each of that PSP's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;<sup>18</sup>
- the total volume of calls switched to each of those numbers;<sup>19</sup> and

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<sup>13</sup> See 47 C.F.R. § 64.1310(a)(4)(i).

<sup>14</sup> See 47 C.F.R. § 64.1310(a)(4)(ii).

<sup>15</sup> See 47 C.F.R. § 64.1310(a)(4)(iii).

<sup>16</sup> See 47 C.F.R. § 64.1310(a)(4)(iv).

<sup>17</sup> See 47 C.F.R. § 64.1310(c)(1). With regard to accuracy of these reports, we expect Intermediate Carriers to have a reasonable basis for identifying the facilities-based long distance carriers, including switch-based resellers, to which they switched toll-free and access code calls that were dialed from a payphone. (For example, we expect the carrier to accurately report the name and contact information for the actual facilities-based long distance carrier to which calls are switched, rather than a switchless reseller that is the Intermediate Carrier's nominal customer.) Furthermore, we remind carriers that, pursuant to section 64.1310(g) of the Commission's rules, each Completing Carrier and each Intermediate Carrier must maintain verification data to support the quarterly reports for 27 months after the close of the quarter for which a report is filed, and it must provide the data to the PSP upon request. See 47 C.F.R. § 64.1310(g).

<sup>18</sup> See 47 C.F.R. § 64.1310(c)(2).

<sup>19</sup> See 47 C.F.R. § 64.1310(c)(3).

- the name, address, and telephone number of the person or persons for each identified facilities-based long distance carrier who serves as the Intermediate Carrier's contact at the identified carrier.<sup>20</sup>

Under the rules, PSPs will receive two reports – the Completing Carrier and Intermediate Carrier reports – to assist them in identifying compensable and noncompensable calls and to identify noncompliant Completing Carriers.<sup>21</sup> Therefore, it is critical that PSPs receive accurate, complete, and timely Intermediate Carrier reports.<sup>22</sup> An Intermediate Carrier that fails to provide an accurate, complete, or timely quarterly report would be in violation of section 64.1310(c) and the Commission could impose fines for violation of this rule.<sup>24</sup>

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<sup>20</sup> See 47 C.F.R. § 64.1310(c)(4).

<sup>21</sup> *Order on Reconsideration*, 19 FCC Rcd at 21472, para. 25.

<sup>22</sup> The Commission has received complaints on behalf of PSPs that they have received inaccurate Intermediate Carrier reports, making it difficult to identify or contact the Completing Carrier for a number of compensable calls. We see no reason why an Intermediate Carrier would fail to provide a PSP with correct contact information for a Completing Carrier given the fact that the Intermediate Carrier actually bills the Completing Carrier to recover the cost of carrying the call. See *Order on Reconsideration*, 19 FCC Rcd at 21468-69, para. 19 n.67. Furthermore, in cases where a PSP notifies the Intermediate Carrier that the information it has been given is inaccurate, we expect that the Intermediate Carrier will be able to respond by providing accurate information.

<sup>24</sup> All carriers must comply with their obligations under the payphone rules. We reiterate that the Commission will not hesitate to take enforcement action, including imposing forfeitures, should Completing Carriers and Intermediate Carriers fail to comply with their compensation and reporting obligations under the payphone rules. The Commission previously addressed the penalties Completing Carriers face for violations of the statute and the rules. The Commission stated that a "failure to pay in accordance with the Commission's payphone rules, such as the rules expressly requiring such payment that we adopt today, constitutes both a violation of section 276 and an unjust and unreasonable practice in violation of section 201(b) of the Act." *Report and Order*, 18 FCC Rcd at 19989, para. 32 (citing 47 U.S.C. §§ 201(b), 276). For violations of its rules, the Commission noted that it could impose a forfeiture of up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation. *Report and Order*, 18 FCC Rcd at 19998, para. 44. The Commission further stated that, in "egregious cases, we may issue an Order to Show Cause why we should not revoke a SBR's section 214 authority, and possibly bar the company's principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission." *Id.* In addition, an aggrieved party may file a complaint here or exercise its right to file a claim in federal court. See 47 U.S.C. §§ 207, 208; *Order on Reconsideration*, 19 FCC Rcd at 21459, para. 5 n.17. We note that the question whether the Telecommunications Act of 1996 provides a private right of action to enforce payphone regulations is pending before the United States Supreme Court. See *Metrophones Telecommunications, Inc. v. Global Crossing Telecommunications, Inc.*, 423 F.3d 1056, 1065-70 (9th Cir. 2005), *cert. granted*, *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, No. 05-705, 126 S. Ct. 1329 (Feb. 21, 2006).

For further information regarding this public notice contact Denise Coca, Competition Policy Division, Wireline Competition Bureau, (202) 418-0574.